U.S. Department of Justice

United States Attorney
Eastern District of New York

NMA/LKG/ALC
F. #2014R00055

271 Cadman Plaza East
Brooklyn, New York 11201

October 9, 2015

By ECF

The Honorable Allyne R. Ross
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Vincent Asaro
Criminal Docket No. 14-26 (S-4)(ARR)

Dear Judge Ross:

The government respectfully submits this letter in opposition to the defendant's motion in limine to preclude at trial certain excerpts of consensual recordings made by a cooperating witness ("CW-1"). See Def's Ltr. Brief, dated October 7, 2015, ECF Docket Entry No. 277 ("Def's Mot.") and attached Exhibits A-E ("Exs."). For the reasons set forth below, the defendant's motion should be denied.

As an initial matter, the government will not seek to introduce the defendant's statement about his sexual relationship with "two sisters" contained in Bates-number 7655 or his reference to "whore" and "whore bastard" at Bates-number 7644, lines 11-12.[1] The government also will not seek to play the recording excerpted at Bates-numbers 7638-7645 and 7627-7637 twice. The government inadvertently included two copies of the transcript of the July 14, 2011 recording in its production to the defense. Finally, we will not offer the defendant's statements about the arrest of "Armando" for an old murder excerpted at Bates-number 7576.

I. The August 15, 2011 Recording

The government will offer the statements of Jerome Asaro ("J. Asaro") on an August 15, 2011 recording pursuant to Federal Rule of Evidence 804(b)(3) as statements

[1] The same transcript was included in the defendant's submission at Bates-number 7641-42.

against penal interest. J. Asaro's statements to CW-1 about his longstanding and close relationship with Frank Lapetina and the presence of both Lapetina and John Doe #6 at his daughter's wedding are relevant because they have a tendency to make facts in dispute at trial more probable than they would be without such evidence. See Fed. R. Evid. 401. As to Frank Lapetina, Count One, Racketeering Act Six of the above-captioned indictment charges the defendant with attempting to rob, and aiding and abetting the attempted robbery of, an armored car on or about and between January 1984 and December 1986. CW-1 will testify that Frank Lapetina, who was a close criminal associate of J. Asaro, participated in the attempted robbery with J. Asaro and CW-1. J. Asaro's recorded statements that Lapetina is a childhood friend whom he has known for 45 years and is his daughter's godfather are therefore extremely probative of J. Asaro's close relationship with Lapetina. Additionally, Count One, Racketeering Act Fourteen, Count Two and Count Three charge the defendant with extortion and extortion conspiracy related to John Doe #6, whom CW-1 will testify is a Bonanno family associate assigned to J. Asaro. Certainly J. Asaro's statement that John Doe #6 was an invited guest at his daughter's wedding is probative of their relationship of trust during a time period relevant to the charges in the indictment.

Federal Rule of Evidence 804(b)(3) permits the admission of a statement that:

> (A) a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's [] pecuniary interest . . . . or to expose the declarant to . . . . criminal liability; and (B) is supported by corroborating evidence that clearly indicate its trustworthiness.

Here, at the time J. Asaro admitted to CW-1 that both Lapetina and John Doe #6 were at his daughter's wedding and admitted the nature of his relationship with Lapetina, J. Asaro was facing violation of supervised release proceedings and denying to his probation officer that either Lapetina or John Doe #6 had ties to organized crime and his familiarity with their criminal history. J. Asaro's recorded statements to CW-1 that he "knew something was wrong" when his probation officer contacted him about the wedding are indicative of his awareness of the consequences he faced for unauthorized contact with organized crime figures and convicted felons. Ex. B to Def.'s Ltr at 7661, lines 41-42. As such, his implicit admissions in the recorded conversation that John Doe #6 and Lapetina attended the wedding clearly exposed him to criminal liability. J. Asaro's statements to CW-1 thereby constituted statements against his penal interest at the time they were made. They are also corroborated by information provided by J. Asaro's probation officer about his subsequent contact with J. Asaro. Thereafter, J. Asaro acknowledged to his probation officer that he was aware of the organized crime ties of both individuals and received a punishment of ninety days in a halfway house.

Accordingly, the government respectfully submits that the August 15, 2011 consensual recording should be admitted at trial.

II. The October 14, 2011 Recording

The government intends to offer the defendant's statements to CW-1 on the October 24, 2011 recording as direct proof of the enterprise and the methods and means of the enterprise.[2] Contrary to the defendant's arguments, the defendant's statements on this recording are extremely probative as to both.[3] They constitute admissions by the defendant about his longtime involvement in organized crime. For example, CW-1 will testify that he and the defendant had previously socialized with other *Cosa Nostra* members and associates at a club run by Sammy Albano. Law enforcement agents will testify about their surveillance of the defendant and other organized crime members at the club associated with Sammy Albano. Therefore, the defendant's admission that he played cards at a club on Sutter Avenue, which was in same the location where Sammy Albano's club used to be, is direct evidence of the defendant's association with organized crime over years. Additionally, CW-1 will testify that the new club at that location referenced on the recording was opened up by an individual associated with Bonanno family captain Ronald Giallanzo and another individual, who was associated with the Gambino family. He will further testify that such card games are one way in which organized crime makes money through the use of social clubs, including by running card games. Those statements are therefore probative of the existence of the enterprise at the time of the recording, the defendant's association with the enterprise and the way the enterprise profits through illegal activity.

Similarly, the government will adduce evidence at trial that the defendant hosted games at a social club referred to as Café Anita, which was at certain times the defendant's club and at other times Bonanno family soldier Sandro Aiosa's club. CW-1 will testify that the defendant and the Bonanno family profited from these games and also used the club as a place to gather and discuss family business, including criminal activity. The defendant's reference on tape to Café Anita is thus probative of the charged enterprise, his association with it and its methods and means of making money. His statement that "Domenic" and "Funzi" used to come to the club are also additional evidence of the robbery conspiracy alleged in Racketeering Act Seven, which CW-1 will testify involved the defendant, Domenic and Funzi. The defendant also lists "Sally Ubatz" (a reference to Sal Polisi) as someone who frequented the club, who CW-1 will testify provided the defendant with a robbery tip about an individual who possessed gold watches, which CW-1 later carried out with Junior Berger, who is also referred to in this recording. Put simply, this recording is a trove of association evidence and direct evidence of the charged crimes.

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[2] The government further relies on its memorandum of law in support of its motion in limine to admit evidence of certain acts committed by the defendant, dated May 27, 2015, ECF Docket Entry No. 234, and its reply, dated July 19, 2015, ECF Docket Entry No. 244.

[3] At oral argument in the above-captioned matter on September 10, 2015, the Court explicitly contemplated admitting such recordings for this purpose. See Transcript at 26-27.

Finally, the government does not intend to make any arguments about the defendant's gambling practices or his personal gambling habits in relation to his recording.[4]

III. Other References

The government respectfully submits that the defendant's objections to his own statements of "opinion about certain individuals in his personal life" should be denied. The defendant does not identify the prejudice he would suffer should these statements be admitted nor any legal basis to do so. Indeed, the government has - on its own - sanitized many of the transcripts, including removing racial epithets, degrading comments about women and gratuitous discussion by the defendant of his personal relationships with women. In every prosecution, consensual recordings of a defendant or a witness may contain some personal references that may cause embarrassment, but that is not a legitimate basis to force the prosecution to break the recordings into smaller, less digestible slices. Doing so would prejudice the government, since one proper purpose for admission of the recordings is to corroborate the cooperating witness and demonstrate CW-1 and the defendant's relationship of trust. Forcing the prosecution to slice each recording into veritable sound bytes may taint the jury's impression of the government's evidence and cause the jurors to question the reliability of such evidence. Additionally, as set forth below, the statements are either admissible on their own, or simply context for other admissible statements.

First, the statement on Bates-number 7575 about "that bitch . . . . Evelyn" is relevant to the extortion charged in Racketeering Act Thirteen. The defendant makes the statement at issue during a call with CW-1, in which he is advising CW-1 of his efforts to extort additional money from John Doe #5 related to the sale of a house and about John Doe #5's statements to the defendant about "Evelyn" and others who were entitled to money from the real estate transaction at issue. Attached as Exhibit A is a full transcript of the October 29, 2010 transcript.

Next, the statements on Bates-number 7635 about "Michelle" are made within the same discussion as the defendant's efforts to obtain money from Dominick (a check-casher associated with the defendant), Bonanno family soldier Sandro Aiosa and the defendant's son Bonanno family captain Jerome Asaro.[5] The defendant has no legitimate basis to request that these other, contextual statements be excised and the government does not plan to dwell inappropriately on such statements during its examination of CW-1. In context, this recording captures the defendant's statements on tape about his frustration related to his inability to profit from his Bonanno family association given his willingness and facility in "running around" for the crime family, resolving "beefs" on its behalf. The full transcript is attached as Exhibit B.

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[4] Should the Court admit the recording, the government objects to the removal of lines 26-30 at Bates 7694. To remove every recording that the defendant might find embarrassing would be unduly burdensome and interrupt the narrative flow of the recordings. The defendant stands charged with murder, robbery and other crimes; the statements objected to by the defendant are not more prejudicial than the nature of the crimes on trial, nor has the defendant demonstrated by citation to legal authority or otherwise the prejudice that he would suffer from their admission.

[5] This is a duplicate of the statement included at Bates-number 7642. The government will only offer one transcript and recording of this conversation.

III. Conclusion

For the foregoing reasons, the government respectfully submits that the defendant's motion should be denied.

Respectfully submitted,

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cc: Clerk of the Court (ARR) (by ECF)
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